

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

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45 MAP 2009

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COMMONWEALTH OF PENNSYLVANIA,  
Appellee  
v.  
QU'EED BATTS,  
Appellant

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BRIEF OF *AMICI CURIAE* INCARCERATED CHILDREN'S ADVOCACY  
NETWORK AND YOUTH SENTENCING AND REENTRY PROJECT  
ON BEHALF OF QU'EED BATTS

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Appeal from the order of the Superior Court (1764 EDA 2014) dated  
September 4, 2015 affirming a sentencing order of the Northampton County Court  
of Common Pleas (CP-48-CR-0001215-2006) dated May 13, 2014

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## **INTEREST OF AMICI CURIAE**

The **Incarcerated Children’s Advocacy Network (ICAN)** is the United States’ only national network of formerly incarcerated youth and is a project of the Campaign for the Fair Sentencing of Youth. ICAN’s mission is to address youth violence through restorative means and advocate for age-appropriate and trauma-informed alternatives. ICAN is committed to creating a fair and just society that recognizes the scientifically proven developmental differences between adolescents and adults. All ICAN members were convicted of murder and/or given a life sentence. Through sharing their personal stories, ICAN members work to highlight children’s unique capacity for rehabilitation by providing living examples of positive change.

The **Youth Sentencing & Reentry Project (YSRP)** is a non-profit, non-partisan organization based in Pennsylvania, dedicated to supporting young people charged in the adult criminal justice system. YSRP is premised on the idea that charging and sentencing children as adults does not negate any of their youthful characteristics, and that children should be treated as children by the systems that are created to serve them. To this end, YSRP offers sentencing advocacy and reentry planning beginning as close to arrest as possible, for young people charged with crimes as if they were adults. A primary component of our sentencing advocacy

work is developing mitigating information for each young person, in support of court-appointed and privately retained counsel. Utilizing the information developed during the mitigation investigation, YSRP begins planning for a young person's reentry into the community before a sentence is imposed and throughout their placement in either the juvenile or adult systems, to ensure a youth-specific and individualized reentry plan upon release, and to turn the contact with the justice system into as positive of an intervention as possible.

## **SUMMARY OF ARGUMENT**

Amici submit that *Miller v. Alabama* and *Montgomery v. Louisiana* mandate a presumption against life without parole for crimes committed while under the age of 18, because all children are capable of growth and rehabilitation. Amici submit this brief in support of Qu'eed Batts to share the stories of formerly incarcerated youth who have been released from prison and are now productive citizens in their communities. These real-life examples demonstrate the unique rehabilitative potential of youthful offenders who embody the Supreme Court of the United States' pronouncement that "children are constitutionally different from adults for purposes of sentencing" because of their "diminished culpability and greater prospects for reform." *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012).

Like Qu'eed Batts and petitioners in related cases, the people whose stories are told in this brief were convicted of homicide crimes as children. Edwin Desamour, Sean Taylor, Xavier McElrath-Bey, and Joseph Farias could have spent their entire lives in prison. Instead, they matured, bettered themselves, and are now contributing members of their communities. Their stories of reform and redemption are not exceptions. There are juvenile lifers in Pennsylvania and around the country just like these men, including Qu'eed Batts, who were incarcerated at a young age and who are capable of rehabilitation—no matter how immature, troubled, or violent

they once may have been. They are living proof that “children who commit even heinous crimes are capable of change.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

## ARGUMENT

### **I. THE UNIQUE CHARACTERISTICS OF YOUTH REQUIRE DISTINCT AND PROTECTIVE TREATMENT UNDER THE EIGHTH AMENDMENT.**

The Supreme Court of the United States has emphasized that the unique characteristics of youth require distinct and protective treatment under the Eighth Amendment. The Court has found that “children are different” by relying on science, reason, and fundamental notions of decency embedded in the Eighth Amendment. *See Miller*, 132 S. Ct. at 2464.

#### **A. Scientific Developments Highlight The Fundamental Differences Between The Child And Adult Brain.**

In *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *Miller v. Alabama*, and *Montgomery v. Louisiana*,<sup>1</sup> the Court underscored that children categorically are less culpable than adults for their actions. To reach this conclusion, the Court relied on “developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds.”

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<sup>1</sup> *Roper* held that imposing the death penalty on children violates the Eighth Amendment, 543 U.S. at 578; *Graham* held that life without parole for children convicted of non-homicide offenses violates the Eighth Amendment, 560 U.S. at 82; *Miller* held that mandatory life without parole imposed on children convicted of homicide offenses violates the Eighth Amendment, 132 S. Ct. at 2475; and *Montgomery* applied *Miller* retroactively, holding that life without parole is unconstitutional for the vast majority of children convicted of homicide offenses, 136 S. Ct. at 736.

*Graham*, 560 U.S. at 68. A child is “not absolved of responsibility for his actions [due to his age], but his transgression is not as morally reprehensible as that of an adult.” *Id.* (internal citation and quotation marks omitted). In particular, the Court relied on three developmental characteristics that distinguish children from adults in determining culpability.

First, the Court recognized that “children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Montgomery*, 136 S. Ct. at 733 (quoting *Roper*, 543 U.S. at 569) (internal quotation marks omitted); *see also Miller*, 132 S. Ct. at 2458; *Graham*, 560 U.S. at 68. Indeed, “the parts of the brain involved in behavior control continue to mature through late adolescence.” *Graham*, 560 U.S. at 68. Children therefore often “underestimate the risks in front of them and focus on short-term gains rather than long-term consequences.” Barry Feld, *The Youth Discount: Old Enough to Do the Crime, Too Young to Do the Time*, 11 Ohio St. J. Crim. 107, 116-17 (2013). Children under 18 cannot vote, purchase alcohol, serve on a jury, or rent a car: examples of policies enacted in recognition of the inherent developmental immaturity associated with youth. *See Roper*, 543 U.S. at 569.

Second, the Court has highlighted, “children are more vulnerable to negative influences and outside pressures, including from their family and peers; they have

limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.” *Montgomery*, 136 S. Ct. at 733 (quoting *Roper*, 543 U.S. at 569) (internal quotation marks omitted); *see also Miller*, 132 S. Ct. at 2458. Adolescent brains are biologically less capable of understanding that saying “no” to peer pressure in the short-term can result in better long-term outcomes. *See, e.g., Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003).

And third, according to the Court, “a child’s character is not as well formed as an adult’s; his traits are less fixed and his actions less likely to be evidence of irretrievable depravity.” *Montgomery*, 136 S. Ct. at 733 (quoting ; *Roper*, 543 U.S. at 570) (internal quotation marks omitted); *see also Miller*, 132 S. Ct. at 2458. As the Court explained in *Graham*, “[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” 560 U.S. at 68. The signature qualities of adolescence—among them impetuosity and recklessness—subside as children grow into adulthood, even for children who commit serious crimes. *See Roper*, 543 U.S. at 570; *see also Feld*, 11 *Ohio St. J. Crim.* at 117.

### ***B. Miller And Montgomery Establish A Presumption Of Transient Immaturity***

*Miller* and *Montgomery* adopt a presumption that life without parole is unconstitutional for every person under the age of 18 at the time of his or her crime. Life without parole “violates the Eighth Amendment for a child whose crime reflects unfortunate yet *transient immaturity*,” *Montgomery*, 136 S. Ct. at 734 (emphasis added); and because a central feature of adolescence is its transitory nature, physiological and psychological growth will lead to the rehabilitation of most or all children. No matter how serious the crime, “ordinary adolescent development diminishes the likelihood that a juvenile offender forever will be a danger to society.” *Id.* at 733. A presumption of transient immaturity—*i.e.*, a presumption against life without parole—is consistent with the Court’s recognition that children have the capacity for positive change through ordinary adolescent development.

At minimum, the imposition of life without parole on children must be “uncommon.” *Miller*, 132 S. Ct. at 2469. And as the Supreme Court of Georgia explained, “[b]y uncommon, *Miller* meant exceptionally rare, and that determining whether a juvenile falls into that exclusive realm turns not on the sentencing court’s consideration of his age and the qualities that accompany youth along with all of the other circumstances of the given case, but rather on a *specific determination that he is irreparably corrupt*.” *Veal v. State*, 298 Ga. 691, 702 (2016) (emphasis added). A

presumption of transient immaturity—one that requires a specific finding of irreparable corruption to overcome—flows directly from the Eighth Amendment prohibition against life without parole for the vast majority of children who commit homicide. *See Montgomery*, 132 S. Ct. at 736.

Although the Court has not reached the question of whether the Eighth Amendment categorically prohibits life without parole for children, the Court has acknowledged that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 573).<sup>2</sup> In other words, “*Miller’s* conclusion that the sentence of life without parole is disproportionate for the vast majority of juvenile offenders [who commit homicide] raises a grave risk that many are being held in violation of the Constitution,” *Montgomery*, 136 S. Ct. at 736, because most—if not all—children are capable of positive change.

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<sup>2</sup> According to a brief filed on behalf of the American Psychological Association in *Miller*, “there is no reliable way to determine that a juvenile’s offenses are the result of an irredeemably corrupt character; and there is thus no reliable way to conclude that a juvenile – even one convicted of an extremely serious offense – should be sentenced to life in prison, without any opportunity to demonstrate change or reform.” Brief for American Psychological Association et al. as *Amici Curiae* Supporting Petitioners at 25, *Miller v. Alabama*, 132 S. Ct. 2455 (2012), (Nos. 10-9646, 10-9647).

## **II. THE LIFE STORIES OF FORMERLY INCARCERATED YOUTH DEMONSTRATE THAT EVEN SERIOUS CRIMES COMMITTED BY CHILDREN REFLECT TRANSIENT IMMATURITY.**

### **A. Edwin Desamour**

Edwin Desamour's life in Philadelphia is dedicated to his family and the community. Desamour is a committed father and the founder and executive director of the Philadelphia nonprofit Men in Motion in the Community ("MIMIC"). MIMIC uses mentoring, community engagement, and educational enrichment to build bridges of community support and social bonds for Philadelphia's high-risk youth, young adults, and previously incarcerated men. Desamour works to keep Philadelphia's children out of trouble and the streets free of violence.

But Desamour's younger life looked vastly different from the devoted community member and family man that he is today. Desamour grew up surrounded by violence and was given his first gun at the young age of 12. At 16, Desamour accompanied a group of friends across town to seek revenge on behalf of another friend who had been beaten up. During the altercation, a teenager was killed. Desamour was arrested, certified as an adult, and faced a first-degree murder charge and life without parole. Ultimately, Desamour was found guilty of third-degree murder and sentenced to 20 years.

Desamour remembers sitting in the adult correctional facility with several other youth who were certified as adults. As they talked about what they wanted to be “when they grew up,” their list was the same as all kids: doctors, police officers, businessmen. “We all laughed, and then for a moment there was just silence in the room,” Desamour said. “What happened to all those hopes and dreams? What went wrong? Then the stories began: abuse in the home, drugs, violence and poverty all around us. We were all good kids but because of our surroundings we were not able to handle peer pressure and make good decisions.”

“While I was incarcerated, the prospect of parole kept me motivated,” Desamour reflected. “It forced me to stay away from trouble and was an incentive to look for ways to better myself. When you know there is no way you will ever be released, the motivation isn’t the same. Yet, many of the guys [with life without parole] who served alongside me still did everything they could to become better educated, participate in available activities and become productive individuals.” Desamour was paroled over 18 years ago, but he has never forgotten the juvenile lifers who remain incarcerated in Pennsylvania, including one of his co-defendants. Desamour’s co-defendant was a teenager when he went to prison but is now a middle-aged man who never had the same opportunities as Desamour to grow a family and a life outside of prison.

Desamour helped found MIMIC following his release from prison to influence other young lives and deter them from causing the harm that he did. “I live each day with the regret that I am responsible for taking another person’s life,” Desamour said. “I can never change that. But I have proven that I should not be judged solely by that horrible act. That is not the sum of who I am.”

### **B. Sean Taylor**

Sean Taylor is 43 and works to help the formerly incarcerated transition back into society in the Denver area. In his job, he guides people on a path he too has navigated—a path he was not sure he would ever have the chance to travel. At age 17, Taylor was charged with first-degree murder after shooting into a rival gang member’s house, killing a fellow 17-year-old. He subsequently was tried, convicted, and sentenced to life in prison with the possibility of parole after 40 calendar years.

Taylor was born in Springfield, Massachusetts to a mother who had him at age 18. Taylor’s father, a heroin addict, was in and out of his life before being sent to prison when Sean was 6. Overwhelmed by the financial burden of raising two sons on her own, Taylor’s mother sent Sean and his brother to live with an aunt in Denver until she could get on her feet enough to take care of the boys again. When Sean was 10, his mother joined her sons in Denver, but soon after arriving, she developed a crack addiction. The family struggled to pay rent on income from her low-wage jobs

and was evicted regularly. Sean looked to the streets for role models.

“Unfortunately, in my neighborhood, if you don’t have a lot of positive male role models, negative male role models become your role model,” Taylor says.

At age 15, Taylor joined the Bloods, lost interest in school, and eventually stopped going. Instead, he sold crack to make money. As a Blood, he also regularly clashed with the local Crips, and after losing several fights, Taylor acquired a gun to intimidate his rivals. Taylor says he never planned to shoot anyone, but three days after his 17th birthday, he was riding with three older gang members when the driver confronted a Crip outside of the car. Taylor told the driver to get back in and said he would shoot into the Crip house instead. He fired one shot toward what he thought was empty space. Later, on the 10 o’clock news, he found out that someone in the house had been killed. Taylor was in disbelief. A sense of dread descended on him. He thought of how his mother would feel if he had been the victim instead. Police soon arrived at his mother’s house and told her she should advise her son to turn himself in. The next morning, she picked Taylor up and took him to the police station.

Taylor was sentenced to life in prison, with 40 calendar years before he was eligible for parole. At first, he remained in the gang. But after a year in prison, he started reflecting on his poor life choices. He realized he was continuing the same

negative behavior that had landed him in prison. Taylor resolved to change his life. He started studying Islam and dedicated himself to his new faith. One day, he invited his former gang friends to the gym to tell them he was leaving the gang. “I said, whatever the consequence may be, let’s get it over with, but I’m ready to dedicate myself to something positive.”

Taylor earned his GED in prison and had planned to take college classes until the college program was eliminated. Taylor nonetheless pursued education on his own, reading voraciously. He was invited to become an adult basic education tutor and ended up teaching both regular and English as a Second Language students, because he had learned conversational Spanish in prison as well. He worked in a variety of other jobs: as a library technician, a janitor, in the prison garment factory, and even for the state DMV call center, where trained prisoners answered first-level calls from people who needed replacement licenses. “I started to feel like, there’s no reason why my life had to be unfulfilled, just because I was in prison,” Taylor says. He thought about what he wanted to do and decided he wanted to help kids get out of gangs. So, he began mentoring younger prisoners. He also helped mediate conflicts between different gangs and groups in prison.

After more than 15 years in prison, and with support from his assistant warden, Taylor sought relief from Colorado’s Juvenile Clemency Board. In early

2011, two years after filing his petition, he was called to the sergeant's office. The sergeant spun his computer monitor around and showed Taylor the screen: the Governor had commuted his sentence, and he would be eligible for parole in six months. Taylor felt like he was dreaming, then snapped back to reality when another inmate in the office at the time grabbed him and said, "Man, you're going home!"

Upon his release from prison, Taylor went to a halfway house. At first, he "felt like an alien," living among residents who had been in prison for only five or six years. When Taylor's cousin handed him an iPhone, he didn't know how it worked. He would stand on the porch and marvel at the trees, "[b]ecause there are no trees in the prison yard." In addition, a woman he had known since he was 10 years old got back in touch with him after his brother posted about his release on Facebook, and they have now been married for more than two years.

Taylor's first post-prison job was at a recycling facility, where he broke down and sorted old electronics for \$10 an hour. He then earned his certification as a personal trainer and began doing that independently to earn money. Now, he works as the deputy director of the Second Chance Center, a nonprofit that works to integrate previously incarcerated men and women back into the community. Taylor helps teach job and basic life skills classes, as well as restorative justice, and he also provides group and one-on-one mentoring. "I feel like I'm serving a better purpose .

. . by doing that work out here as opposed to in prison,” he says. “If I can do that gang outreach or intervention work out here, then maybe I can stop a young man who’s the same age as me when I got locked up from picking up a gun. That’s the fulfillment, to be able to say we might actually have saved some young man’s life, not only from getting shot to death, but from throwing his own life away.”

Taylor is thankful for the chance to live a life defined by more than his worst moment. And he believes others convicted as children should also have the opportunity for release, because he knows firsthand how those who grow up in prison can mature. “The possibilities [for redemption] are endless, because we were kids,” he says. “We do some extremely stupid things as kids. Some of them, unfortunately, have a tendency to be deadly. But does that mean that that person can’t change? A kid who didn’t have any good role models and followed the bad people in life? There’s always going to be some positive thing that comes along to help you become a better person, and all you have to do is latch onto it. That’s what I did. I started to look at everything good I wanted to be, and I said, ‘What’s going to help me do that?’”

### **C. Xavier McElrath-Bey**

Xavier McElrath-Bey works as a youth justice advocate for the Campaign for the Fair Sentencing of Youth, where he coordinates ICAN, a national coalition of

formerly incarcerated youth that advocates for age-appropriate sentencing alternatives to life without parole. Before joining the Campaign, he worked as a clinical field interviewer at Northwestern University, gathering research data on the mental health needs and outcomes of formerly incarcerated youthful offenders. His current life would have been unimaginable to him when he was a 13-year-old facing a murder charge.

Born to an abusive, alcoholic father and a mother who struggled with mental health issues, McElrath-Bey grew up on the South Side of Chicago in a home filled with violence and short on food, clothing, and love. In response to these living conditions, McElrath-Bey began acting out at an early age. He was first arrested for stealing when he was 9. At age 11, he joined a gang and was shot in the face by his best friend while they served as lookouts at the order of an older gang member. McElrath-Bey was in and out of Chicago's Juvenile Temporary Detention Center. When he was not in detention, McElrath-Bey spent most of his time on the street to avoid his home life and committed crimes to provide for himself. Though he now realizes he was "living under a false illusion of love and acceptance," as a child, he viewed the gang as his family. "I felt safer in the streets with my friends than in my own home. We all seemed to have similar family problems, and we forged a bond

with each other,” he says. “I had no idea where my life was heading, and to be honest, those thoughts never really crossed my mind.”

By the time he was 12, McElrath-Bey had accumulated 19 arrests and seven convictions for charges including armed robbery, aggravated battery, and unlawful use of weapons. At 13, he participated in the killing of a 14-year-old rival gang member. Although he did not physically kill the rival gang member, he helped lure him to an abandoned building where he was beaten to death. McElrath-Bey pleaded guilty and was convicted of first-degree murder.

When first incarcerated, McElrath-Bey maintained his gang affiliation and continued to get into fights. At age 18, McElrath-Bey assaulted a corrections officer during a prison riot and was put in solitary confinement for a year. In solitary, McElrath-Bey had no choice but to reflect on his life. “I finally had to face myself,” he says. “I thought about all the people I had hurt. I thought about the 14-year-old kid who died as a result of such destructiveness. I thought about his family and my family. Eventually, I just broke down in tears. It was then, with my growing maturity, that I began to think about the deeper meaning of life. I started to contemplate the morality of what had happened, and also how I was deceived by the illusions of gang life.”

When he was released from solitary confinement, McElrath-Bey renounced membership in his gang and turned towards education. While in prison, he earned his associate's degree and bachelor's degree through a program with Roosevelt University. He maintained a 4.0 GPA and was inducted into the school's honor society. He also worked as an academic office clerk to help other inmates obtain their GEDs. McElrath-Bey decided to focus his future work on helping other troubled youth avoid the pitfalls he encountered. "I came to believe that I could be somebody in life once I was released," he says.

McElrath-Bey earned his release from prison in October 2002, after serving 13 years of his sentence. Soon after his release, he re-enrolled at Roosevelt University and earned his master's degree in counseling and human services. In his current job, McElrath-Bey works with other formerly incarcerated youth and travels regularly to meet with stakeholders in the criminal justice community and discuss sentencing reform. The position has brought him back to his old neighborhood, where he has an office in a community center. Being there, he says, reminds him what he's fighting for: keeping kids with "limited resources and opportunities" from ever having to stand in front of a judge and face criminal punishment, like he did.

McElrath-Bey emphasizes that although he is a living testament of the potential for positive change, he is in no way the exception. "Many of the juveniles I

was incarcerated with, those who I grew up with in prison, are now free,” he says. “They also have had a second chance at life after serving over a decade in prison, and they don’t take their freedom for granted. Like me, they also vowed to try and help other kids from making the same mistakes we made.”

#### **D. Joseph Farias**

Joseph Farias was released from a California prison in October 2012 after serving more than 20 years of a 20-years to life sentence. As a free man, he is crafting a stable life and using his past experiences with addiction and the justice system to inform his career path and personal priorities. But in 1992, he was a 17-year-old charged with murder and theft and facing the possibility of spending the rest of his life in prison.

Farias’ troubles began when he was just 11. He had been a “spoiled” only child, participating in marching band and playing in a county softball league before his parents separated. After their separation, Farias became angry and resentful toward his mother. He started getting into fights in the neighborhood and at school. Farias longed for a sense of belonging and community, so he joined a gang. He started drinking alcohol and smoking marijuana. Around the same time, Farias’ mother developed an addiction to drugs and they bounced from home to home.

Eventually, Joseph moved in with his father. When he was 16 and living with his father, a neighbor introduced Farias to crystal meth and he soon found himself addicted. Farias says he became more aggressive and violent while on crystal meth, but also that it made him feel like he was in control—a feeling he craved after years of family instability. A year later, he met a 14-year-old new student at his school. The younger boy told Farias he was a member of a gang in the town where the younger boy previously lived—about 20 miles away—and asked Farias to join. Farias said he felt sorry for this younger kid who claimed to be part of a gang but had no “homies” around, so Farias agreed to join.

The boy introduced Farias to other members of the gang, and soon after joining, they asked Farias to drive with them to confront someone. “There had been a problem between someone else and a member of our gang, someone I didn’t even know.” Farias had been high for 14 days straight, barely sleeping or eating. He was paranoid and at times hallucinated. But Farias does not consider his altered state an excuse for what happened next. “I think deep down in my heart, I was looking for the acceptance and validation, and I was willing to get into trouble to gain it.”

Someone handed Farias a gun on the way to the altercation, and as they were driving, they saw a stranger standing in the middle of the street. As they drove around him, the man on the street reached into his waistband. Someone in the car

yelled out that the man had a gun. Thinking he might be a rival gang member, Farias pulled out the gun he had been given and shot him. They left him for dead. “In my heart, there was an, ‘oh, my God!’ moment,” he said. “I knew I had made a bad decision. I was immediately very remorseful and very sad.”

News about the shooting spread quickly around school, and many students hailed Farias as a hero. But he “didn’t feel that way,” he said. “I felt really sorry for what I had done.” Farias was arrested a week later. By then, he had been on a 21-day drug binge. “I literally walked into that cell and said, ‘This is it. This is where I am going to be for a long time.’ I didn’t know what was going to happen, but I knew that because of my wrong, I was going to be there for a long time.”

While in police custody, he learned that his fellow gang members had reported him to police. Farias says he didn’t understand how the police and court system worked. Child mental health experts determined that Farias was amenable to change and should face accountability in the juvenile system. Instead, he was charged as an adult. Farias pleaded guilty to second-degree murder after his lawyer advised him he would be held only until he was 25. Instead, with gun enhancements, he was sentenced to 20-years-to-life.

Farias spent the first few years at the California Youth Authority, which provides rehabilitation, education, and treatment services for children convicted of

serious crimes. Then he was transferred to an adult prison. He immediately knew that adult prison was different. “It was challenging and lot more violent.”

While incarcerated, Farias earned his GED and began to develop positive relationships with people around. “I eventually began to have compassion and empathy for others,” he said. He credits his increased maturity, his faith, and his participation in Alcoholic Anonymous and Narcotics Anonymous with this change. He eventually began to facilitate groups with other inmates and was hired to be a mentor.

In 2007, another inmate encouraged Farias to participate in the college program at the prison. Farias doubted he was smart enough for college, but he took one class and did well. Farias felt encouraged and completed the academic coursework in alcohol and drug studies. His studies qualified him to take the state test to become a certified alcohol and drug abuse counselor, which he passed. “My life just skyrocketed,” he said.

After going before the parole board three times beginning in 2004, Farias was granted parole at his fourth parole hearing in October 2012; Farias had served 20 years and nine months in prison. Farias draws on the education and experience he gained while incarcerated and works as a drug and alcohol abuse counselor in

California. He also gives presentations at schools and police departments, sharing his story. He is married and once again is active in a county softball league.

“Freedom is helping and serving others rather than myself,” he said. “It is making amends every day for my wrongs, for the life I took and for all of the people I affected.”

## CONCLUSION

*Miller* and *Montgomery* have created a strong presumption against life without parole for children, rooted in the basic principle that all children are developmentally predisposed to maturation and rehabilitation. Indeed, the U.S. Supreme Court recognized that the “penological justifications for life without parole collapse in light of the distinctive attributes of youth.” *Montgomery*, 136 S. Ct. at 734 (internal quotation marks omitted). Because the Court established a presumption of transient immaturity—*e.g.*, a presumption of a capacity for change, consistent with ordinary adolescent development—there must be finding of permanent incorrigibility before life without parole can be imposed on an individual who committed a crime under the age of 18.

*Miller* and *Montgomery*’s presumption against life without parole is axiomatic in light of examples like Edwin Desamour, Sean Taylor, Xavier McElrath-Bey, and Joseph Farias, whose lives demonstrate that the “bad acts [they] committed as a teenager are not representative of [their] true character.” *Graham*, 560 U.S. at 79. Not only are children developmentally capable of change, when given a chance, even children with histories of violent crime can and do become productive and law abiding citizens. Desamour, Taylor, McElrath-Bey, and Farias are not unique; they simply were given an opportunity to demonstrate their growth.

Ordinary human development will result in the maturation and rehabilitation of most—if not all—children as they grow into adulthood. A presumption against life without parole for children is crucial, then, to ensure that children whose crimes reflect “transient immaturity” are not “held in violation of the Constitution.” *Montgomery*, 136 S. Ct. at 736. A mandate that a child eventually die in prison destroys both the child’s and society’s ability to benefit from that growth and rehabilitation.

For the foregoing reasons, Amici respectfully request that this Honorable Court recognize a presumption against life without parole for Qu’eed Batts and similarly situated petitioners.

Dated: July 1, 2016

Respectfully submitted,

/s/ [Attorney name]

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Attorney for *Amici Curiae*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Pennsylvania Rule of Appellate Procedure 2135, I certify that the foregoing document complies with the Court’s word count limits. It contains 5,388 words.

/s/  
[Attorney/address]  
Attorney for *Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2016, I electronically filed the foregoing BRIEF FOR AMICI CURIAE IN SUPPORT OF APPELLANT with the Deputy Prothonotary for the Pennsylvania Supreme Court using the PACFile system.

I further certify that I served two copies of the foregoing BRIEF FOR AMICI CURIAE IN SUPPORT OF APPELLANT on the following counsel by first class mail, which service satisfies the requirements of Pennsylvania Rule of Appellant Procedure 121.

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